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OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION

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October 22, 2003

John L. Conroy
Verizon Massachusetts
185 Franklin Street
Boston, MA 02110

RE: Performance Assurance Plan Audit
Verizon Request to Amend Audit Requirement to Tri-annual Audit
D.T.E. 03-50

Dear Mr. Conroy:

The Department instituted the annual audit requirement of Verizon-Massachusetts' ("Verizon") Performance Assurance Plan ("PAP") in Order Adopting Performance Assurance Plan, D.T.E. 99-271 (September 5, 2000) ("Order Adopting PAP"). The first audit of the PAP was completed with the auditors issuing a Final Report on January 31, 2003.¹ The Department issued a Letter Order on March 13, 2003 determining that, as a result of the first audit, no substantive changes in Verizon's PAP processes and procedures were necessary. Performance Assurance Plan, D.T.E. 99-271, at 2, Letter Order (March 13, 2003) ("Final Report Letter Order").

The second audit of the PAP was due to start in the first quarter 2003. September 16 Letter Order at 2. On March 28, 2003, Verizon filed a request seeking an extension of the

¹ The Department stated, in a letter issued on September 16, 2002, that Verizon's first audit would satisfy the audit requirement for 2001 and 2002. Performance Assurance Plan, D.T.E. 99-271, at 2, Letter Order (September 16, 2002) ("September 16 Letter Order").

Department's requirement to initiate the bidding process.² Verizon stated that a delay would allow the Department to consider parameters of the next audit. Verizon filed a proposal on July 8, 2003, to convert the PAP audit from annual to tri-annual. The Department requested comments on Verizon's proposal. AT&T Communications of New England, Inc. ("AT&T") submitted comments on August 11, 2003, and Verizon filed reply comments on August 25, 2003.

As its primary support for its proposal, Verizon emphasizes the "highly successful" results of the first audit of its PAP (Verizon Proposal at 1). Verizon asserts that findings of satisfactory performance in the Massachusetts PAP audit and Consolidated Arbitrations audit are consistent with findings in other state and federal audits (*id.* at 2). In particular, Verizon cites to its success with its Section 271 applications, and its Federal Communications Commission ("FCC") Wholesale Metrics merger audit (*id.*). Verizon also notes that Commission staff in New York and Virginia have been replicating metrics contained in those states' PAPs and have not identified any significant data quality issues with Verizon's wholesale performance data, and that Competitive Local Exchange Carriers ("CLECs") in Massachusetts now have the ability to replicate the metrics to verify for themselves Verizon's PAP results (*id.*).³

In addition, Verizon maintains that standards across the former Bell Atlantic footprint are substantially the same, providing the Department "with additional assurance that Verizon's metrics process and procedures provide the necessary controls to ensure continued results that provide accurate and timely reporting of parity service performance in the wholesale marketplace" (*id.*). Verizon also notes the fact that audits are expensive and require dedication of significant time and resources (*id.*). Verizon recommends "the next audit be performed in 2005 and cover no more than the most recent 12 months" (*id.*). Finally, according to Verizon, CLECs' procedural participation in PAP audits is unnecessary, because the appropriate means to verify the accuracy of the PAP is by an independent audit (Verizon Reply Comments at 9).

AT&T requests that the Department (1) deny Verizon's request to amend the audit requirement to require audits every three years, and (2) amend the audit process to allow CLECs to participate procedurally (AT&T Comments at 1). AT&T alleges that Verizon's description of its performance is overstated and inaccurate (*id.* at 2). According to AT&T, the PAP audit ensures that Verizon is providing reliable data, and "[i]t is reasonable to assume that

² The Department did not rule on Verizon's extension request. In light of the Department's action in this letter, Verizon's extension request is dismissed as moot.

³ Verizon informed the Department, in a letter of July 25, 2003, that Carrier-to-Carrier Metric algorithms ("CMAs") would be made available to CLECs in Massachusetts for checking Verizon's calculations. The CMAs are programming code for each of the Carrier-to-Carrier ("C2C") metrics, and when executed against the performance data, produce the C2C metric performance results.

[Verizon's] performance was predicated upon the existence of the audit" (id. at 2-3). AT&T objects to Verizon's claim of a "proven track record of strong performance at both the state and federal level," stating that only one audit of the PAP has been performed in Massachusetts, and that Verizon's performance in New Jersey exhibits substantial non-compliance (id. at 4). AT&T contends that Verizon is, in effect, seeking "performance amnesty" for 2003 and 2004 (id. at 6).

AT&T argues that CLECs should have procedural participation in the audit in Massachusetts, as they do in New Jersey and Pennsylvania (id. at 3). AT&T further argues that the Department should not remove the annual audit provision because CLECs do not have the means of validating what Verizon is reporting (by access to CMA algorithms), as CLECs do in New York (id. at 5). Finally, AT&T alleges that Verizon's request to amend the audit process does not fall within the circumstances that the Department identified for changes to the audit requirement in D.T.E. 99-271 (id. at 2).

As an initial matter, the Department has discretion to grant Verizon's request, notwithstanding AT&T's argument that our Order in D.T.E. 99-271 limits that discretion. In our Order adopting the PAP, the Department stated that "[s]hould changes in market conditions warrant, the Department may revise its directives concerning audits, and the Department will decide when it is no longer necessary for these audits to be conducted." Order Adopting PAP, at 33. Clearly, the Department envisioned a day when the audit's scope and interval would change and even the day when the audit would no longer be necessary or even useful. Neither day has come.

For the following reasons, the Department declines to amend the annual audit requirement. The results of the first audit demonstrate that Verizon's compliance with the data generation, calculation, and reporting requirements, including the bill credit requirements, of the Massachusetts PAP is very good. Final Report Letter Order. However, while the scope of the first audit was comprehensive, the period of the performance that was evaluated was not. The first audit looked at one month (May 2002) of Verizon performance. Thus, in the more than two years that the PAP has been in operation, the verification of Verizon performance is based only on a single month's performance.

Verizon argues that its performance for May 2002 is representative, not only of its performance during the previous period the PAP was in operation, but more importantly, Verizon's performance going forward, and that any problems identified by the first audit, as well as audits in other states, have resulted in changes to Verizon's internal processes and procedures that ensure that the same errors will not be repeated. We agree that as long as Verizon's internal processes and procedures are modified to correct past errors, there should be a strong correlation between the May 2002 results and future performance. However, given the importance of accurate PAP reporting to the overall effectiveness of the PAP, and given,

further, the Department's assurance to the FCC during the Section 271 proceeding that a PAP would be an important check on incumbent local exchange carrier compliance during the immediate post-approval period, we are unwilling -- at this time -- to go to a three-year audit cycle, or even a two-year audit cycle, without additional evidence of Verizon's performance. Therefore, we find that Verizon's proposal to amend the audit requirement is premature. At least one additional audit is necessary for confirmation that Verizon's reporting for Massachusetts is accurate before we consider modifying Verizon's annual audit requirement. If the results of the next successive audit are as strong as those of the previous audit, a second successful audit would be strong evidence to support amending the frequency and scope of future audits, and the Department would consider such a amendment at that time.

Accordingly, the Department denies Verizon's proposal to amend the PAP audit requirement. Verizon shall submit a draft request for proposals on November 24, 2003 for bids on the next audit. The next PAP audit is to be conducted in 2003-2004, covering the most recent twelve months of wholesale performance.⁴

Sincerely,

_____/s/_____
Paul G. Afonso, Chairman

_____/s/_____
James Connelly, Commissioner

_____/s/_____
W. Robert Keating, Commissioner

_____/s/_____
Eugene J. Sullivan, Jr., Commissioner

_____/s/_____
Deirdre K. Manning, Commissioner

⁴ The Department does not see the need to allow CLECs to have procedural participation in the PAP audit. Because the purpose of the audit is to verify results, and the Department selects an independent third-party with expertise to conduct the audits, it is unnecessary to include the CLECs in the audit. However, CLEC suggestions for defining the scope of the audit may give the Department valuable insight. Therefore, the Department will invite CLEC comments on Verizon's draft RFP for the next PAP audit; but the Department will remain the arbiter of the value of acting on any such comments.